

# **ORGANIZATIONAL EFFECTIVENESS OF FINANCIAL SECTOR REGULATORS – BENCHMARKING RESULTS**

**COMISIÓN NACIONAL DEL MERCADO DE  
VALORES**

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## Introduction

This report covers the conclusions of a benchmarking study which compares and contrasts the organizational effectiveness of different financial sector regulators / supervisors. The institutions in question are facing important challenges to adapt to a new reality observed in financial services, and are thus strengthening their structures, resources, processes and tools to better meet new supervisory demands.

Regulators / supervisors from sixteen jurisdictions participated in the study. In addition, insights and data were included from regulators / supervisors from some other jurisdictions. The data-set, updated to 2018, is based on all relevant publicly available information, detailed questionnaire responses and follow-up interviews with senior management.

This benchmarking study creates a fact base on organizational effectiveness – while preserving individual supervisor confidentiality – across four major dimensions: mandate and powers, governance structure, organization and resourcing, and key organizational processes.

## List of acronyms and abbreviations

**AI** – Artificial Intelligence

**AMCESFI** – Macprudential Authority Financial Stability Board (Autoridad Macprudencial Consejo de Estabilidad Financiera)

**AML / CFT** – Anti-Money Laundering / Counter Financing of Terrorism

**CESFI** – Financial Stability Board (Comité de Estabilidad Financiera)

**CNMV** – National Securities Market Commission (Comisión Nacional del Mercado de Valores)

**CRO** – Chief Risk Officer

**LMV** – Ley del Mercado de Valores (Consolidated Text of the Securities Market Act)

**DGSyFP** – Directorate-General for Insurance and Pension Funds (Dirección General de Seguros y Fondos de Pensiones)

**ESMA** – European Securities and Markets Authority

**EU** – European Union

**FGD** – Deposit Guarantee Fund (Fondo de Garantía de Depósitos)

**FROB** – Fund for Orderly Bank Restructuring (Fondo de Reestructuración Ordenada Bancaria)

**FTE** – Full Time Employee

**HR** – Human Resources

**IT** – Information Technology

**LoD** – Line of Defence

**MoU** – Memorandum of Understanding

**SEPBLAC** – Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offences (Servicio Ejecutivo de la Comisión de Prevención del Blanqueo de Capitales e Infracciones Monetarias)

**IGAE** – Intervención General de la Administración del Estado (The General Financial Controller of the State)

**MdE** – Ministerio de Economía

# Overall findings

## Mandate and powers

CNMV is the Spanish securities and market supervisor, having a broad set of regulatory and supervisory objectives. It is responsible for supervising capital markets, individuals and entities which participate in these markets, namely asset managers and financial intermediaries. When considering the financial sector as a whole, CNMV shares financial supervision responsibilities with the Bank of Spain (in charge of supervising the banking sector as part of the Single Supervisory Mechanism) and the Dirección General de Seguros y Fondos de Pensiones (responsible for supervising insurance companies and pension funds).

Being a securities and market supervisor, CNMV's main focus lies on conduct supervision, ensuring that all market participants respect the different regulations that affect them. This is in line with similar supervisors across different jurisdictions, as the firms supervised by securities regulators do not pose, from a prudential perspective, as big a systemic risk as do banks and insurance companies, thus making microprudential supervision of secondary importance when compared to conduct supervision. CNMV is responsible for supervising investment firms and other capital markets intermediaries, including credit institutions on their investment services. Market operators of trading venues have some regulatory power in Spain, which affects issuers whose securities they trade. Nevertheless, all rules developed at market operators must be approved by CNMV, either by an official approval process or on a non-opposition basis. CNMV's conduct supervision mandate is reinforced by a responsibility for investor protection, over which it is mandated to adjudicate, with non-binding powers. Although Anti-Money Laundering and Counter Financing of Terrorism (AML / CFT) is on the SEPBLAC's remit (the national authority for AML / CFT supervision) CNMV cooperates with this agency by including these topics in its inspections whenever required, and then reporting back with the information. CNMV can also request AML / CFT reports for new entities entering the market, or to new investors who are acquiring a significant share of an entity.

CNMV relies on a broad set of enforcement powers to perform its mandate, which are in line with peers. These include the ability to issue warnings and financial penalties, impose the restriction or suspension of certain activities, revoking licenses and authorizations, confiscating assets (if a judicial authorization is granted) and applying to a competent court to effect the freezing of assets. Enforcement powers *not* available to the CNMV include initiating civil procedures (except in very specific cases) or criminal procedures, although CNMV may share with the General Prosecutor (or directly with criminal courts) evidence of alleged criminal activities and may act as witness in criminal procedures.

A financial stability mandate is assigned to CNMV, which performs it mainly in three ways. Firstly, it ensures prudential supervision of investment firms and assets management companies. Secondly, it conducts on-site inspections to systemic entities such as exchanges or clearing houses, making sure their systems and infrastructures comply with standards. Thirdly, CNMV is a member of AMCESFI, the newly created agency for macroprudential supervision which is mandated to monitor systemic risk in order to maintain financial stability.

Although FROB is the national resolution authority mandated to resolve financial institutions, CNMV has a preventive resolution mandate over investment firms, which focuses on resolution planning. CNMV has the power to apply measures such as the liquidation of particular assets, the termination of business and changing organizational structures. In addition, CNMV regularly elaborates resolution plans for investment firms, which are then

shared with institutions' senior management, so to prepare troubled entities for an eventual intervention by the FROB, which can be triggered by the CNMV.

## **Governance and accountability**

There is clarity of roles and responsibilities, as its mandate is clearly defined and established by the Legislative Royal Decree 4/2015 (the Ley del Mercado de Valores - LVM) and reflected in its Internal Regulation. It has operational independence, in the sense that it can define its own strategy and key objectives for a multi-year period, independently from short-term political goals, publicly outlining them in its annual Plan of Activities. CNMV enjoys independence in its funding through fees and levies charged to the entities it supervises. However, its independence is limited with respect to how it deploys those funds, especially in the area of human resources as it needs Government's approval on matters such as setting salaries and promotions with salary implications, overall headcount and number of employees per salary level. These restrictions entail difficulties when a new area needs to be created due to the salary constraints.

Current Board members' background is varied, with a balanced mix of experience in both private and public sector, including other regulators / supervisors. Regarding the appointment process, as stated in the LVM, candidates must be people of recognized competence in matters related to the securities markets, while the Chairperson and Vice-Chairperson must also attend a Hearing in Congress to ensure that they have the right background and preparation and are not affected by any relevant conflict of interest. However, creating some more transparent and clear nomination criteria for Board members would reinforce the perception of independence. In addition, formally staggering their mandate over time can ensure continuity of the Board's work and strategic goals. Increasing mandate to 6 years, in line with other Spanish supervisors (Bank of Spain) and other leading peers could ensure continuity and strengthen the international influence of the management.

Board governance at CNMV differs from other peers that clearly separate the oversight role of the Board from the executive role. The Board's mandate is clearly defined by the LVM, equipping it with a wide scope of responsibilities, although most are delegated in the Chairperson, Vice-Chairperson and Executive Committee. The three non-executive Board members sitting in the Executive Committee are not involved in day-to-day operations.

CNMV follows a ladder approach to deal with the different topics on the table, with issues being discussed in the different Directorate-Generals (with their different departments) and then brought up to a non-formal committee<sup>1</sup> which includes the General Directors and the Chairperson and Vice-Chairperson. This so-called Management Committee appears to be a useful tool for the Chairperson to exercise the function of directing and coordinating the activities of all the managers of the CNMV.

The most important issues are further elevated to the Board, which meets at least once a month. The level of discussion and effective challenge at this instance is reported to be effective, although there are no formal mechanisms in place to ensure this. Other peers have deployed mechanisms to improve the Board effectiveness, such as recurrent performance assessment of Board members<sup>2</sup>, training programs, continuous feedback and monitoring of the quality of Board reporting, etc. Additionally, setting a predefined calendar to make sure the Board devotes time to the long-term strategy in addition to the day-to-day issues could

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<sup>1</sup> There is a proposal in course to reflect this Committee in the CNMV's internal regulation.

<sup>2</sup> In January 2019 a performance assessment process for Board members has been approved.

be a proper measure to counter some of the drawbacks of having an Executive Chairperson and Vice-Chairperson responsible for the day-to-day management of the institution.

CNMV employs many of the external accountability mechanisms seen at leading peers. It ranks high in the number of regular documents published, including its Annual Report and Activity Plan, where it outlines its strategic priorities for the coming year, industry reports and strategic documents. The Chairperson must present the Annual Report to the Congress and CNMV successfully engages with external stakeholders through its Advisory Committee, which has representatives of many different stakeholder groups, including issuers, investors, market infrastructures, credit institutions and insurance companies, professional associations, Deposit Guarantee Fund and regions. This committee meets at least on a quarterly basis and provides its opinion on circulars and other issues when the Executive Committee deems appropriate. Nevertheless, CNMV could further improve its engagement with external stakeholders by conducting independent stakeholder perception surveys.

Keeping a transparent relation with the press also increases the level of external accountability, which is successfully achieved at CNMV, with regular engagements with different media outlets, complemented by the publication of press releases and the most relevant public interventions made by Board members in CNMV's website.

Financially, CNMV is externally accountable to regular audits by the Tribunal de Cuentas (constitutional body independent from the Government) and by the General Financial Controller of the State (internal body organically dependent from the Government).

## Organization and resources

Overall, CNMV has a solid **organizational structure**, although it differs from leading peers in some respects. As a securities and markets regulator, CNMV follows best practice by being organized by functional activity area (i.e. markets and institutions), with the Chairperson and Vice-Chairperson overseeing the different activity Directorate Generals and support departments, in what represents a manageable span of control. CNMV differs from leading practice in the sense that it does not have an independent risk function<sup>3</sup>, which usually reports directly to the Chairperson – isolating and empowering such a function would elevate the visibility and prominence of risk awareness. Although we can observe a good level of cooperation between departments, mostly ensured by the Management Committee, there are no formal horizontal centres of excellence, which could build specific expertise that can then be deployed horizontally across functions. The creation of such centres of excellence at CNMV, by partly or fully allocating FTEs to cross-department activities (which would mostly be highly technical) would lead to new, different ideas, improving the supervisor's capabilities in its supervisory work.

**Costs** for the CNMV are ~20% below predicted cost<sup>4</sup> – we observe the largest variance to peers in the areas of support costs (higher than peers) as well as securities & market supervision costs (lower than peers). Given the total market capitalization and the funds under management in Spain, costs are lower than expected for supervision. Predicted costs for central activities (Authorisation, Strategy, Enforcement) are broadly consistent with peer average. Support function costs as a percentage of total current costs are above predicted cost – total share of ~35-40% for support costs (including Legal) represents a deviation from the peer average of about ~30%. In this group of support costs, IT, Facilities, HR and

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<sup>3</sup> There is a proposal in course to reflect this function in the CNMV's internal regulation.

<sup>4</sup> Based on Oliver Wyman's proprietary model, normalizing by market size; these results should be seen as a proxy for the direction rather than an absolute recommendation, which falls beyond the scope of this benchmarking exercise.

Finance expenditures are broadly in line with peers, constituting ~20% of the total share. Other costs (~15-20%) represent the most important deviation from peer average, slightly above ~5%, driven by the FTE costs in departments such as Legal, General Secretariat or Research and Statistics, although if new competencies are added to the CNMV, this deviation will be partially offset as the overhead costs should remain constant.

There are some aspects regarding **talent management** that hinder CNMV's ability to recruit and maintain the best talent, in part due to the rigidity in the career paths. First and foremost, Government authorisation is required every time CNMV needs to increase the headcount of any professional category, as it depends on the Government Public Employment Offer, leading to a situation in which new positions cannot be filled out swiftly when a vacancy is open, in a process which is not under its control. At best, 7-8 months are needed to effectively on-board new staff. Hiring external contractors for some specialized supervisory tasks might be a way to overcome this issue. Talent management is further limited by the fact that CNMV cannot freely use its funds to determine promotions, thus offering lower rates than other national or international supervisors (e.g. Bank of Spain) and private sector entities, resulting in a competitive disadvantage. Additionally, there are salary pools by hierarchy levels, which are also capped by the Government, making the creation of new departments (which requires promoting employees) or simply promoting staff dependent on Government's approval, in a process that is long and inflexible. The aforementioned factors make staff see limitations to find opportunities for their promotion, compensation increase and professional development. For this reason, a significant number of employees end up leaving to other supervisors or the private sector. To tackle this trend, a clear Employee Value Proposition could be formulated around aspects such as work's impact, international profile, development opportunities, mobility options, work-life balance and flexibility. Revamping workforce planning, so to attract talent with expertise in new technologies which are increasingly being used in financial services can also be leveraged to improve talent management. Finally, as different departments may have different supervisory needs at different points in time, the creation of a talent resource pool that could be used in all of them depending on current needs, is a possible way of overcoming resource scarcity, while providing a great learning experience for junior staff and enhancing general performance.

## Key processes

**Coordination with other domestic stakeholders**, such as Government agencies, other regulators, supervised entities, professional bodies or the media, is at best practice at CNMV. Engagement is especially deep with other supervisors, under terms which are formally established in different MoUs (e.g. Bank of Spain, DGSyFP). This is of special importance given Spain's sectoral approach to supervision. Relations with other stakeholders are also strong, being mostly leveraged by the Advisory Committee, which is composed of representatives of different stakeholder groups. Relations with other supervisors is deepened by Board mutual representation schemes, with representatives of the Bank of Spain and Secretariat of Treasury seating in CNMV's Board (a seat in the Board for a Government's representative is seen in some jurisdictions as a potential threat to independence, albeit in the case of CNMV there is no evidence that this has actually posed any challenge to independence), and representatives from the CNMV having a place in the Board of the Bank of Spain and the FROB. Coordination with other stakeholders can be further improved by defining a clear strategy for this purpose, defining the stakeholder groups to engage, objective of the engagement and how to do so.

CNMV also meets leading standards in **international stakeholder engagement**. The International Affairs Department is fully dedicated to international dealings, serving as gatekeeper on such topics to the entire organization. CNMV's position on international affairs and its international strategy are decided by the Chairperson and Vice-Chairperson together

with the General Directors, in coordination with this department. Representation of CNMV in specialized committees is by subject matter experts, though they are briefed and debriefed to maintain consistency across the organization and over time. The relation with international agencies is formally established in 8 MoUs with supranational organizations and 26 others with supervisors in international jurisdictions. Relations with supranational institutions are deepened by the fact that the Chairperson and Vice-Chairperson of the CNMV alternate a seat in different supranational organizations' governing bodies, such as ESMA, ESRB, FSB or IOSCO. The international function also works as a new idea "incubator", where new concepts observed in international settings are tested, later being transferred to other department's remit in case they are successful (e.g. FinTech supervision was developed in this department and then transferred to the strategy function's responsibility). The effectiveness of the participation in international meetings could be further improved by standardizing the process which is currently employed for the drafting of a predefined agenda that CNMV experts can rely on, including the topics to be discussed, CNMV's position and its counterparts' opinions, although at top management level these processes are already in place, particularly for ESMA and IOSCO meetings.

**Regulatory development** follows a thorough procedure at CNMV, with a policy roadmap being laid out in its Activity Plan every year. This includes strategic policy goals for the next 2 years, as well as the regulations ("Circulares") which are planned to be drafted. CNMV matches leading peers in this field by having clearly assigned roles and efficient coordination between the different departments, in a process which is led by the Strategy and Institutional Relations Department. Any specific policy initiative is led by the appropriate subject matter expert, who receives inputs coming from all functions across the organization depending on the topic. Strategy and Legal will ensure consistency with the strategy and provide legal quality assurance. External inputs are also considered when writing regulation, especially when coming from supervised entities, the Advisory Committee, which represents different stakeholders, and international agencies like ESMA, which develops European regulation as well as guidelines that may be implemented. Once regulation is approved, supervision teams ensure its successful implementation in the markets.

CNMV has a strong **authorization** process in place, which could be further improved by ensuring deeper involvement of the supervision department. We can see some peers moving towards activity-based authorization. At CNMV, authorization is an independent function, led by the Institutions and Registration Department (responsible for the authorization of entities) and the Markets Directorate General (in charge of the authorization of market related operations). CNMV makes use of mechanisms to improve cooperation with entities seeking authorization, leveraging specialized call centres or holding face-to-face meetings to guide them through the process. The creation of a committee composed of supervisory and authorization teams, allowing knowledge sharing between both<sup>5</sup> could move CNMV closer to leading peers, as long as this formalisation would not hinder the swiftness and agility of the current process. Also, the case for building an independent fit and proper assessment function would be sensible, as the amount of such assessments performed by CNMV (more than 300 per year) is considerable<sup>6</sup>. This would lead to improved efficiency and consistency in this process.

**Securities and market supervision** is at the very core of CNMV's mandate, being performed across the entire value chain. An increasing focus on applying new technologies to supervision can be seen and should be further incentivized, as CNMV is catching up with leading peers in this sense. Several processes are already being automated or on the verge

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<sup>5</sup> General Directors ensure coordination among their Departments through weekly and ad-hoc meetings

<sup>6</sup> According to CNMV, there is intention to set such independent function in the near term.

of being so (e.g. some automatic reports on supervised entities are already being generated, there are algorithms in place to create entity risk-based rankings and software is used to raise red flags in market abuse situations). CNMV leverages several conduct supervision tools, such as product monitoring, sales and advertising monitoring, analysis of governance and culture, analysis of staff training or complaints data analysis. A risk-based supervision process is followed, making use of historical data, forward-looking factors, as well as information from investor complaints and inquiries to assess different entities' risks. Still, this risk-approach is not followed on an organizational-wide level, being conducted only by departments themselves, meaning there is no cross-department risk framework for supervision. Recognising that the mandate of different supervision departments is diverse, the CNMV, as other supervisors do, would benefit from using common procedures or tools across departments such as intellectual capital sharing platforms, etc. In the medium term, using common tools would foster greater symbiosis and opportunities for shared efforts. This is mitigated by the weekly Management Committee's meeting, which leads to open communication and allows the different General Directors, Chairperson and Vice-Chairperson to be brought up to speed on what is happening across the entire organization in its different departments. On top of that, both Board and Executive Committee ensure proper organizational-wide view of the most important issues. Both on-site and off-site supervision is conducted, prioritizing on-site inspections of high-risk firms – again, only at a department level, with no cross-department risk-based approach.

**Investor engagement and education** is seen as a priority at CNMV. A dedicated Investor Department leads all investor relations, while a cooperation with the Bank of Spain promotes financial education, which is responsibility of the Strategy and Institutional Relations Department. The Investor Department, which is embedded in the legal function, has a broad mandate to engage investors, dealing with their complaints, questions, new financial services areas (e.g. FinTech, Cryptocurrencies) and managing whistleblowing. This department can adjudicate on customer complaints, despite doing so with no binding powers – it can, however, refer particular cases to the supervision teams, which can draft a report that can be escalated to the Executive Committee, having the possibility to then trigger a sanctioning process. A trend to increase and modernize investor engagement channels, which can be seen at leading peers is being followed by CNMV, as it has a dedicated section of its website for investors, and presence in social media through a LinkedIn and a Twitter account, as well as a YouTube channel. Financial education is carried out in partnership with the Bank of Spain, based on a specific MoU. The result of this is the Financial Education Plan, which represents a strategy to increase financial literacy amongst the Spanish population.

CNMV will have a more influential role in Spanish **macroprudential supervision**, as the Government has already created the AMCESFI, a new body responsible for macroprudential supervision in which CNMV will take part. Chaired by the Ministry of Economy and Competitiveness, it will have a stronger mandate than the existing Committee (CESFI, of which CNMV is also a member). This new body will have the power to issue formal opinions and warnings regarding systemic risk and financial stability.

CNMV's **enforcement** process involves all supervision teams, which can issue warnings or recommendations when certain inappropriate conduct is observed in the market. In case harder measures are required (e.g. fines), these teams draft reports which are then referred to the Executive Committee and the enforcement function within the Legal Affairs Directorate General. We can see an independent enforcement function at most leading peers, which deals with the entire sanctioning process – it is less common to observe “soft power” enforcement activities (warnings, etc.) sitting with the supervisory departments, as we do in CNMV's case.

**Financial innovation** is seen as a strategic priority at CNMV, which is materialised with the creation of the new FinTech and Cybersecurity sub-directorate, that will report to the strategy function. In order to better address this, CNMV launched the FinTech Portal, an informal space that fosters the engagement with FinTech companies and FinTech service providers. This platform leads to a two-way relationship which allows participants to be advised on regulatory matters, while CNMV can monitor the innovations that are disrupting the industry it supervises. A regulatory sandbox is also under development, which represents another way of supporting financial services incumbents that could be used by the entire Spanish financial system, and it is run by CNMV in the market side.

CNMV has a strong **strategic planning** process. The design of the strategic plan has a clear owner in the organization, which lays in the Strategy and Institutional Relations Department. The plan follows the main strategic lines outlined by the Chairperson and the Executive Committee, while also including suggestions from all departments. The plan is submitted for approval to the Board and it includes objectives that support delivery of policy goals (some top-down strategic lines for the next two-year period which are defined by the Chairperson and the Executive Committee, and a significant number – usually more than 40 – of more specific annual objectives determined by considering inputs from all departments). The strategy is presented in the yearly Activity Plan, including a summary of the fulfilment of objectives from the previous plan. More transparency in the communication of objective fulfilment could bring CNMV closer to leading peers, especially by publishing a more detailed report on this, including concrete examples of which objectives were effectively fulfilled and which were not<sup>7</sup>, as well as objectives which were already a business as usual activity for the organization. CNMV makes clear connection between the objectives of the bi-annual strategic plan and the annual objectives, which is considered best practice. However, the supervisor could close the gap with the leading peers with the introduction of specific KPIs (this measure is already mentioned in the 2018 plan) for strategic planning and the alignment of the priorities with the budget, even though in reality CNMV has no budgetary constraints.

CNMV would benefit from improving its approach to **performance management**, better linking it with strategy. Staff is evaluated on a yearly basis on organization-wide competencies and specific objectives, but performance management is done only at employee level, not at department or unit level – although Directors' objectives can be seen as their own departments' objectives. Also, making how individual objectives are cascaded down from the organizational strategy clearer would help standardizing individual's goals. In addition, it would be beneficial to design clear performance metrics, making the whole process more transparent, and to create some headroom for variable compensation. The usual levers we observe for that are increasing the total amount for variable compensation or avoiding "pot" or zero-sum schemes, which are usual at CNMV, with the exception of top management (General Directors and Directors reporting directly to the Chairperson), who have variable compensation linked to objectives - regulated by law –.

CNMV's **risk management** framework should be considerably improved, with clear allocation of responsibilities and corresponding resources in the organization. Establishing an elevated risk function with a direct reporting line to the Chairperson and headed by a Chief Risk Officer (CRO) clearly leads to the definition of responsibilities for risk management along the 3 Lines of Defence framework (3 LoD). In this framework, the 2<sup>nd</sup> LoD should be constantly assuring compliance with risk management procedures. We do not observe such degree of visibility and resourcing to the independent risk function nor clarity

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<sup>7</sup> According to the CNMV, this degree of detail has been included in the 2019 Activity Plan with respect to the objectives included in the 2018 Activity Plan

on the 3 LoD scheme at CNMV, albeit according to its internal regulation the role is under the remit of the Strategy and Institutional Relations Department by CNMV's. The creation of such a framework is being considered<sup>8</sup>, although its completion timeline is still unclear. To ensure a proper risk assessment and management, CNMV should nominate a CRO with the mandate of effectively deploying the widespread 3 LoD framework, with a comprehensive risk taxonomy and map. Finally, the supervisor should promote a risk management culture in the entire organization, making use of training programmes.

Several important **digitalization** initiatives are being developed at CNMV, which will bring the supervisor closer to leading practice. These include the digitalization of internal processes and engagement with supervised entities. However, these tactical initiatives are not incorporated into a broader comprehensive strategy. CNMV would benefit from starting the design of a multi-year strategy, including the overall vision and objectives, as well as specific goals and timelines to achieve them. Assigning clear responsibility to an "owner" of this strategy improves its likelihood of success. Leading peers are establishing dedicated functions or governing bodies to this purpose. In addition, a digital culture needs to be fostered, starting from top management, which is key to achieve such organizational buy-in. Specific trainings to upskill staff are also necessary to make employees capable of dealing with these new technologies. Given CNMV's limitation to create new departments, making this a priority element of the mandate of an already existing function could be an alternative, being the IT function the best candidate<sup>9</sup>. Also, the strategy should include the way in which CNMV plans to incorporate new trends in technology like Big Data, Artificial Intelligence and Machine Learning for the purpose of financial supervision.

Observations at most international peers show that **outsourcing** is used at times, particularly on highly specialized, technical inspections requiring specific expertise. CNMV very rarely **outsources** supervisory processes and could benefit from doing it for some specific on-site or off-site technical investigations (e.g. mystery shopping). Other support functions like HR, facilities, IT maintenance and work safety activities are also subject to outsourcing

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<sup>8</sup> According to CNMV, there is a proposal in course to update the mandate and operating model of the internal risk function

<sup>9</sup> According to CNMV, there is a proposal in course to reflect this aspect in CNMV's internal regulation as part of IT's functions.

## Summary of key findings

After analysing data from a wide range of sources, the conclusion of this benchmarking study is that CNMV is broadly in line with industry standards for most dimensions evaluated.

### **Areas in which CNMV is in line with leading practice**

CNMV is amongst leading peers in several fields of organizational effectiveness, applying best practices which are above peer standard.

#### *External accountability mechanisms*

CNMV makes use of several external accountability mechanisms. These include the regular and consistent publication of key accountability documents, including an Annual Report, where the previous year's activity and achievements are laid out, and is presented by the Chairperson to Congress, and an Activity Plan which outlines the strategic objectives for the period to come. The supervisor is also held accountable by several external bodies, e.g. an Advisory Committee composed of representatives of relevant stakeholder groups. Regular audits by the *Tribunal de Cuentas* (constitutional body independent from the Government) and by the General Financial Controller of the State (internal body organically dependent from the Government), validate CNMV's financial situation. All these mechanisms are accompanied by a strong and transparent relationship with the press and the public.

#### *Coordination with other domestic stakeholders*

CNMV has good relationships and strong coordination with other domestic authorities, with special focus on engaging other financial supervisors, a key aspect given the sectoral approach to supervision observed in Spain. These relations are formalized through several memoranda of understanding between different supervisors, as well as mutual representation on the various boards (e.g. CNMV and the Bank of Spain each have one representative seating in the other's Board).

#### *Coordination with international stakeholders*

International dealings are extremely important to CNMV, given Spain's status as an EU Member State and the supervisor's ESMA and IOSCO membership. The International Affairs Department is responsible for CNMV's international dealings, while serving as the gatekeeper to the entire organization in such matters. This department, together with the Chairperson, Vice-Chairperson and the General Directors, define the organization's position and strategy on international affairs. Representation of CNMV in specialized committees is by subject matter experts, though they are briefed and debriefed to maintain consistency across the organization and over time.

CNMV's international relations are formalised through numerous memoranda of understanding, with both national and supranational organizations in different jurisdictions. The International Affairs Department also assumes a role as an "incubator" of new ideas, which it observes at international counterparts. In case these new practices' development is successful, they will be moved to the appropriate department's remit.

#### *Regulatory development process*

Policy development at CNMV is based on a policy roadmap, which is included in the annual Activity Plan. The regulatory development process is managed by the Strategy and Institutional Relations Department. Any specific policy initiative is led by the appropriate subject matter expert, considering inputs from all departments reflecting their supervisory

experience. Strategy and Legal will ensure consistency with the strategy and provide legal quality assurance. External contributions from the Advisory Committee, supervised entities and international bodies like ESMA are also considered when developing regulation.

### **Key opportunities for improvement and significant benefits of investment**

This benchmarking exercise also showed some areas where CNMV deviates from best practice, representing room for improvement where investment would lead to positive development of its organizational effectiveness.

#### *Board members nomination process*

CNMV would benefit if the appointment of certain Board members was formally staggered over time, thus ensuring continuity in the Board's work and vision. An increase in the tenure period from 4 to 6 years would also reinforce this continuity in the mandate.

#### *Autonomy in the definition of headcount and talent management*

CNMV cannot increase headcount for any professional level or hire new staff without the Government's authorization. Concerning financial independence, CNMV funds its entire operation through fees and levies charged to the industry but is not able to decide without prior permission from the Government how this budget may be used for compensation purposes. This limitation impacts the individual pay of CNMV's employees but also represents a limitation in terms of org-chart design, as the total number of departments, sub-directorates, etc. cannot change without approval. Such rigidity imposes limitations to the career development opportunities that may be offered to employees, and CNMV's competitiveness vis-à-vis other public and private sector offerings.

CNMV is limited in its talent management capabilities, also as it depends on the rigid Public Employment Offer upon authorization by the Government, which represents a limitation as new positions cannot be filled swiftly.

We also observe that new technologies being used in financial services creates the need to change employee recruiting profiles, so to get talent with expertise in areas such as data science or AI and Machine Learning. Adapting workforce planning to account for this will prove beneficial for CNMV's supervision work.

#### *Board Governance*

CNMV's Board has a clear mandate with well-defined responsibilities, and a reasonable level of expertise ensured by its members' varied backgrounds. The same may be said with respect to the CNMV's Executive Committee, which is the body that exercises by delegation on a permanent basis most of the powers of the Board and which operates in practice as the main supervisory and management body of the CNMV (in fact, the Board works just as an "extended Executive Committee" with two additional members, the Secretary General of the Spanish Treasury and the Deputy Governor of the Bank of Spain, and deals only with certain specific relevant and planning decisions, holding meetings at most once a month while the Executive Committee meets every week).

However, there are some opportunities for improvement in this field. Although there are some checks and balances in place (mostly provided by the three non-executive members of the Executive Committee, who are not involved in the day-to-day activities, and the two external members of the Board and the Parliament, to whom the CNMV's Chairperson must present the Annual Report and report whenever requested), it would be appropriate to adopt measures to promote an effective challenge role vis-à-vis the Executive Chairperson.

It is true that having an Executive Chairperson is a common practice across peers, but this poses theoretical challenges to the effective challenge and empowerment to push forward complex mandates (e.g. combining day to day priorities with deeper influence or long/medium-term transformation objectives); which some supervisors (e.g. ASIC) have addressed by separating powers. The creation of Board effectiveness assessment mechanisms could also strengthen the actual and perceived effective challenge without greater changes to the governance model. Additionally, having dedicated Board training programs and formal quality control mechanisms for the reports used by the Board to support decision making would bring CNMV closer to leading peers.

#### *Cross-department cooperation and exchange*

CNMV shows some organizational structure features observed in leading peers, such as the fact that its primary organization principle is by activity area, leading to a manageable span of control by the Chairperson and Vice-Chairperson, which together have seven direct reporting lines (although two departments report directly to the Chairperson, and one other to the Vice-Chairperson). At the same time, it is best practice at large peers to have dedicated FTEs working at horizontal centres of excellence, where expertise is bundled and deployed across industry segments.

#### *Performance management*

CNMV has designed and conducted individual employee performance assessments for all employees except the members of the governing bodies. CNMV could come closer to leading peers in performance management if it were to extend its framework to include department-level objectives, which should be cascaded down from the organization's strategy, and then serve as a starting point for the setting of individual objectives. Nevertheless, the performance management system is currently on hold due to the lack of resources in the area in charge. Additionally, the publication of the organization's performance management results in CNMV's Annual Report would bring more transparency to the whole process.

Also, CNMV is limited in its performance management capabilities, as variable salaries are subject to Government's approval, thus missing out on one of the most effective performance management mechanisms.

#### *Risk management and control*

Leading peers in risk management have an independent risk function – usually with a direct reporting line to the Board or the Chairperson – which is responsible for risk management in the organization. This goes together with an effective implementation of the 3 Lines of Defence framework, with a clear assignation of the respective responsible for each one of them, which improves risk management while fostering a sense of accountability by risk owners. Effective, easy to use risk management tools, such as risk maps or dashboards which allow for the clear visualization of the risks being faced at any point in time is also a necessary condition for effective risk management. Additionally, precisely defining the organization's risk appetite serves as guidance for policy making and the supervisory work, while fostering a risk culture across the organization.

We also observe some lack of independence in the internal audit function, as the Internal Control Department reports to the Board (which, of course, is chaired by the [executive] Chairman). Its independence (and certainly perception of independence) would be reinforced, for instance, if this department were to report to non-executive Board members only.

## *Digitalization*

Although there are several digitalization initiatives currently being undertaken at CNMV, such as the automation of several internal procedures (e.g. transaction reporting, generation of different reports on supervised entities) and communication with supervised entities, there is no comprehensive strategy for digitalization<sup>10</sup>. Such a strategy would ensure that all initiatives work towards the accomplishment of overarching goals, reinforcing the message to employees and the general public regarding CNMV's intention to embrace the transformative powers of data and technology. This strategy should include the way in which CNMV intends to use big data and new technologies (like Artificial Intelligence and Machine Learning) to make its supervisory work more efficient and effective. Establishing a dedicated committee or function to carry such a strategy would create ownership over it, thus maximizing its likelihood of success.

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<sup>10</sup> According to CNMV, there is a proposal in course to reflect this aspect in CNMV's internal regulation as part of IT's functions.



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